

Message Text

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PAGE 01 LIMA 05718 161627Z

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FOR L/ARA - DAVID A. GANTZ

E.O. 11652: N/A

TAGS: BDIS, EIND, PE

SUBJECT: APPLICABILITY OF "GREENE AGREEMENT"

1. A COMPLICATED CASE HAS ARISEN INVOLVING AN EX-SUBSIDIARY OF THE CERO CORPORATION TO WHICH THE TERMS OF THE "GREENE AGREEMENT" MAY APPLY. THE DEPARTMENT'S OPINION IS ACCORDINGLY SOLICITED IN THE FOLLOWING MATTER:

A. AT SOME POINT PRIOR TO THE ASSUMPTION OF POWER BY THE CURRENT REVOLUTIONARY GOVERNMENT, CERRO DECIDED TO ORGANIZE A SMALL COMPANY INCORPORATING A ROD MILL AND FACILITIES FOR THE PRODUCTION OF SULPHURIC ACID. THIS COMPANY, KNOWN AS CIA. INDUSTRIAL DEL CENTRO (CIDECSA), WAS A WHOLLY-OWNED SUBSIDIARY OF THE CERRO CORPORATION (NOT OF CERRO DE PASCO) AND WAS LOCATED IN LA OROYA IN ORDER TO TAKE ADVANTAGE OF CERTAIN INCENTIVES THEN PROVIDED BY THE GOP FOR LOCATING MANUFACTURING FACILITIES OUTSIDE OF LIMA.

AFTER THE REVOLUTION, CERRO DECIDED THAT IT WOULD BE MORE ADVANTAGEOUS TO LIQUIDATE CIDECSA, SELLING ITS ASSETS TO CERRO DE PASCO. (THIS DECISION WAS PRESUMABLY TAKEN BECAUSE CERRO WISHED TO AVOID THE COMPLICATIONS OF CONTENDING WITH AN INDUSTRIAL COMMUNITY AND PREFERRED TO CENTRALIZE ALL ITS LA OROYA OPERATIONS WITHIN CERRO DE PASCO TO WHICH THE LAWS PERTAINING TO THE MINING COM-

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PAGE 02 LIMA 05718 161627Z

MUNITY WOULD APPLY.) LIQUIDATION WAS ACCORDINGLY BEGUN

IN 1971 AND WAS COMPLETED IN 1973, ALL THE LAWS OF PERU HAVING BEEN COMPLIED WITH AND THE APPROVAL OF THE RELEVANT AGENCIES OF THE GOP, INCLUDING THE TAX DEPARTMENT, HAVING BEEN OBTAINED. THE LIQUIDATOR OF CIDECSA WAS DR. NICOLAS DE PIEROLA, THEN A FULL-TIME EMPLOYEE OF CERRO.

B. SOME MONTHS AGO, THE TAX DEPARTMENT PRESENTED A BILL TO CENTROMIN, THE SUCCESSOR CORPORATION OF CERRO DE PASCO, ASSESSING BACK TAXES AGAINST CIDECSA. CENTROMIN REFUSED PAYMENT. SUBSEQUENTLY, THE BANCO DE LA NACION, IN A DOCUMENT DATED JUNE 13, 1975, PRESENTED A CLAIM AGAINST "CIA. IND. DEL CENTRO SA N. DE PIEROLA" FOR S/.16,875,924.99. THIS IS IN EFFECT A CLAIM AGAINST DR. DE PIEROLA PERSONALLY AGAINST WHICH THERE IS NO APPEAL AND FOR WHICH HE IS PERSONALLY LIABLE. DR. DE PIEROLA, WHO IS NOW IN PRIVATE PRACTICE, BUT ON RETAINER FOR CERRO, BELIEVES HE CAN STALL THE PAYMENT FOR A SHORT TIME, BUT THAT EVENTUALLY HIS BANK ACCOUNTS AND PERSONAL BELONGINGS WILL BE CONFISCATED.

2. THE QUESTION WHICH ARISES IS WHETHER OR NOT DR. DE PIEROLA IS PROTECTED UNDER THE TERMS OF ARTICLES V AND I OF THE GREENE AGREEMENT. SOME POINTS TO BE CONSIDERED IN REACHING AN OPINION ARE (1) DR. DE PIEROLA IS A PERUVIAN CITIZEN; (2) CIDECSA WAS NOT A SUBSIDIARY OF CERRO DE PASCO BUT OF CERRO CORPORATION; (3) CIDECSA CEASED TO EXIST IN 1973, SOME MONTHS BEFORE THE GREENE AGREEMENT WAS SIGNED (ALTHOUGH AT ONE PLACE IN THE DOCUMENTS PREPARED BY THE GOP TO JUSTIFY THE AMOUNT OF THE PAYMENT TO THE USG, CIDECSA IS REFERRED TO AS AN EXISTING ENTITY); (4) AT THE TIME OF SIGNATURE OF THE GREENE AGREEMENT, DR. DE PIEROLA WAS PRESUMABLY NO LONGER AN EMPLOYEE OF CERRO; AND (5) FINALLY, INASMUCH AS THE GOP IS LEVYING A TAX CHARGE AGAINST CIDECSA/DE PIEROLA AS THOUGH CIDECSA WERE STILL IN EXISTENCE, WHETHER IT MIGHT NOT BE REGARDED AS A "SUBSIDIARY, BRANCH, OR AFFILIATE" OF A UNITED STATES NATIONAL.

3. THE EMBASSY WOULD APPRECIATE THE PROMPT ATTENTION OF THE DEPARTMENT IN THIS MATTER IN VIEW OF THE JEOPARDY IN LIMITED OFFICIAL USE

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PAGE 03 LIMA 05718 161627Z

WHICH DR. DE PIEROLA APPEARS TO FIND HIMSELF.
DEAN

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